

November 15, 2002

3.6 Existing Offsite Land Uses -

3.6.1. General Considerations

Pursuant to Rule 40E-2.301(1)(b), a permit applicant must demonstrate that the proposed withdrawal will not cause harm to offsite land uses, as defined in this section. The intent of this condition for issuance is to protect certain offsite land uses existing at the time of permit issuance, modification, or renewal. This rule does not establish a property right in water, but only prohibits harm from a consumptive use withdrawal to protects certain land uses that are dependent upon water being on or under the land surface based on the considerations set forth below.

3.6.2 Specific Considerations

Whether a particular offsite land use is considered protected under this rule depends on whether there is a reasonable expectation that water will continue to exist on or under the land surface. When determining whether there is a reasonable expectation in the occurrence of water for a particular offsite land use, the District will consider: (1) the historic hydrologic natural and manmade variations on the property; (2) the purpose and nature of the water or water source, such as surface water management or water quality treatment; and (3) the resource efficiency of protecting the land use without supplementation (for example, restricting consumptive uses from impacting water levels in a cow pond versus supplementing water levels in the cow pond with another water source). This rule is not intended to protect wetlands and other surface waters, which are protected against environmental harm pursuant to Rule 40E-2.301(1)(c).

Only land uses that existed prior to the initiation of the consumptive use are protected under this rule. When a permit modification is considered under this rule, only the land use existing at that time of the pending application are considered. The responsibility to mitigate for harm to an offsite land use only extends to offsite land uses that predate the request for modification and only applies to harm projected to occur due to the requested modification. For permit renewals, the applicant is required to demonstrate that the allocation being renewed will not cause adverse impacts to land uses that existed at the time the allocation or portions of the allocation were first authorized either through an original permit or permit modification consistent with the above provisions.

The following offsite land uses are protected from harm caused by a consumptive use withdrawal under this rule, when consistent with the considerations identified above:

- A. Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged; not including aesthetic values; The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal etc.).
- B. Damage to agriculture crops, including damage resulting from reduction in soil moisture resulting from consumptive use.
- C. Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

In order to receive a consumptive use permit the applicant must demonstrate that the proposed use will not cause harm to the existing offsite land use. The applicant must identify those land uses that are potentially impacted from the withdrawal, such as sinkhole prone areas, seepage irrigated crop lands, and surface water management systems. The applicant must demonstrate that the resulting change in water levels related to the proposed consumptive use will not cause harm, as described above.

In order to receive protection under this rule, the impact on a land use must be the result of a consumptive use withdrawal. Impacts to land use can occur as a result of many different activities, such as drainage activities, reduced rainfall, regional trends, and other non-consumptive use related influences. Impacts from these non-consumptive use influences will not be protected or mitigated for under this rule. Sufficient technical and scientific proof of the cause and effect of the alleged land use impact must exist, demonstrating that associated consumptive use has harms direct and substantial impact on the offsite land use.

If the permit applicant cannot provide reasonable assurance that a proposed withdrawal will not harm an offsite land use, the applicant must submit a mitigation plan. The mitigation plan shall identify actions necessary to mitigate once the impact has occurred, or is imminent. Such actions must be sufficient to provide water consistent with the authorized use and will require a permit modification if required by Rule 40E-2.331. As necessary to offset the harm, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

The Permittee shall mitigate harm to offsite land uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will require a permittee to mitigate immediately, or upon

the actual occurrence of harm. The determination of when mitigation is required is based upon the likelihood that the harm is projected to occur.

Mitigation of offsite land use impacts must occur if a projected or existing consumptive use causes harms an offsite land use in violation of this rule.

3.6.2. Central Florida Sinkhole Prone Area

Withdrawals from existing individual wells that derive water from the upper Floridan Aquifer and occur within the area shown in Figure 3.6.2.A identified as a sinkhole prone area, shall not exceed 1.37 mgd. The pump capacity of new or replacement wells within this area shall not exceed 950 gpm per well.